

Anulopa V. vs the Manager

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Court : Kerala

Decided On : Jul-01-2021

Judge : Honourable Mr. Justice Devan Ramachandran

Appeal No. : WP(C)/18502/2014

Appellant : Anulopa V.

Respondent : The Manager

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE DEVAN RAMACHANDRAN THURSDAY, THE 1ST DAY OF JULY 2021 / 10TH ASHADHA, 1943 PETITIONER: ANULOPA V., AGED 48 YEARS W/O.A.P.MUKUNDAN, ABHIRAMAM, MOKERI P.O., KANNUR DISTRICT. BY ADV SRI.CIBI THOMAS RESPONDENTS:

1 THE MANAGER PRMK HIGHER SECONDARY SCHOOL, KOLAVALLLOOR, KANNUR DISTRICT-670650. 2 THE DISTRICT EDUCATIONAL OFFICER THALASSERY, KANNUR DISTRICT-670101. 3 THE DIRECTOR OF PUBLIC INSTRUCTIONS SECRETARIAT, THIRUVANANTHAPURAM-695001. 4 STATE OF KERALA

REPRESENTED BY ITS SECRETARY, DEPARTMENT OF GENERAL EDUCATION, SECRETARIAT, THIRUVANANTHAPURAM-695001. 5 T.P.PREETHA HSA (MATHEMATICS), PRMK HIGHER SECONDARY SCHOOL, KOLAVALLOOR, KANNUR DISTRICT-670 650. 6 V.RANJITH HSA (MATHEMATICS), PRMK HIGHER SECONDARY SCHOOL, KOLAVALLOOR, KANNUR DISTRICT-670 650. 7 PRAKASH BABU HSA (SOCIAL SCIENCE), PRMK HIGHER SECONDARY SCHOOL, KOLAVALLOOR, KANNUR DISTRICT-670 650. SRI.R.K.MURALEEDHARAN SRI.P.M.PAREETH SRI. P.M.MANOJ - SR.GP

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 01.07.2021, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

JUDGMENT

The petitioner says that she has been working as a High School Teacher in Social Science from 07.06.2001 in the services of the PRMK Higher Secondary School, Kannur.

2. The petitioner says that as per Ext.P1 staff fixation

order for the year 2009-2010, respondents 5 and 6 were

retrenched from service for want of vacancy and that in the same year, 13 other teachers were rendered surplus. She says that out of these teachers, six including herself, were accommodated in the post of HSA (English), adopting the teacher-student ratio of 1:45 and following the erstwhile subject ratio of 1:1:1. She says that since five other teachers could have been retained only by adopting 1:40 teacher-student ratio, the same was also done.

3. The petitioner then adds that, however, respondents 5 and 6 could not be saved from retrenchment, either on the adoption of the ratio 1:1:1:1 or 1:1:1 and therefore, that they were thrown out on 15.07.2009. She submits that respondents

5 and 6 challenged this, which led to Ext.P2 order from the 3rd respondent - Director of Public Instructions (now

designated as the Director of General Education), whereby, respondents 6 and 7 were retrenched; which, in turn, led the 7th respondent to file a Revision Petition before the 4th respondent - State of Kerala, followed by filing W.P(C)No.17663/2011 before this Court, which finally ended in Ext.P3 order being issued by the Government.

4. The petitioner asserts that Ext.P3 order was

illegal, since it has set aside Ext.P2 and had upheld Ext.P1 order; but that the 6th respondent thereafter, submitted a representation before the 4th respondent - State of Kerala, which then issued Ext.P4 order, retrenching her as also the 7th respondent, but interestingly, without setting aside Ext.P3.

5. The petitioner alleges that Ext.P4 order is grossly improper, since, for one, the 4th respondent - Government has apparently sat in judgment over its own earlier Ext.P3

order illegally; and for the other, because it has been

issued without hearing her and without considering the fact that the fixation of subjects ought to have been based on the ratio 1:1:1 and not 1:1:1:1, it being for the period prior to 07.01.2002. The petitioner also has an adscititious case that even if the ratio of 1:1:1:1 is applied, she ought to have been retained in the post in question, she being the senior-most among the High School Assistants (Social Sciences) in the School. She, therefore, prays that Ext.P4 be set aside, as also Ext.P5 consequential order; and to direct the respondents not to recover any amounts from her salary for the academic year 2009-10.

6. I have heard Sri.Praveen Kumar, learned counsel appearing for the petitioner; Sri.P.M.Pareeth appearing for the 5th respondent and Sri.P.M.Manoj, learned Senior Government Pleader.

7. Upfront, I must record that I do not intend to go into the merits of the rival contentions at this stage because I notice that the primary contention of the petitioner is that Ext.P4 has been issued by the Government, modifying Ext.P3 order of theirs, without hearing her, though granting such an opportunity to other teachers - including respondents 5 to 7. Sri.Praveen Kumar, learned counsel for the petitioner, in fact, submits that the Government could not have issued Ext.P4 order in the manner as has been done now, since it is his client who has been wholly affected by the same and therefore, the absence of an opportunity of hearing to her - to make her views known before the Authority - renders the entire exercise vitiated and unconstitutional.

8. Sri.P.M.Pareeth, learned counsel appearing for the 5th respondent and Sri.P.M.Manoj, learned Senior Government Pleader, affirmed that Ext.P4 has been issued without hearing the petitioner. They, however, submitted that even if the petitioner had been heard, the position would have been no different since, as has been stated therein, she could not have been accommodated against the vacancy in English, according to her rank in seniority.

9. Even though I have heard the learned counsel for the 5th respondent and the learned Senior Government Pleader as afore, the fact remains that it is the specific case of the petitioner that, contrary to what has been done through Ext.P4, the fixation ought to be done under the ratio of 1:1:1 and not as per the ratio 1:1:1:1. This issue certainly has not been properly considered by the Government, presumably because the petitioner was not heard; and I am, therefore, of the firm view that the matter will require to be reconsidered by the Government, particularly because Ext.P4 has been issued on the

representation of the 6th respondent against Ext.P3 order

earlier issued by it and hence a legitimate contention is impelled by the petitioner that the Government had no power to review its own order as per the KER. This was, therefore, all the more reason why the petitioner ought to have been heard.

10. In the afore circumstances, I allow this writ

petition and set aside Ext.P4, as also the consequential Ext.P5 order; with a resultant direction to the competent Authority of the 4th respondent - State of Kerala, to hear the petitioner as also all other interested teachers, including 6th respondent and the Manager of the School - either physically or through video conferencing - thus culminating in an appropriate fresh order, as expeditiously as is possible, but not later than four months from the date

of receipt of a copy of this judgment. While completing this exercise, the Authority will also consider the petitioner's contention that the Government has no power to review its own earlier Ext.P3 order, based on Ext.P6 representation of the 6th respondent. Needless to say, since I have already set aside Exts.P4 and P5, no recovery shall be attempted from the salary of the petitioner for the academic year 2009-10, save in terms of the new order to be issued as per the directions herein; and that too, only after affording all necessary opportunities to him as per law. This writ petition is thus ordered. Sd/- DEVAN RAMACHANDRAN JUDGE stu
APPENDIX OF WP(C) 18502/2014 PETITIONER ANNEXURE

EXHIBIT P1 : TRUE COPY OF THE STAFF FIXATION ORDER

NO.D.DIS./5412/49/B4 DT.29-8-2009.

EXHIBIT P2 : TRUE COPY OF THE ORDER

NO.RA(3)/77715/2009/DPI/D.DIS.DT.24-3-2011 PASSED BY THE 3RD
RESPONDENT. EXHIBIT P3 : TRUE COPY OF THE
GO(RT)NO.1192/2012/G.EDN.DT.12-3-2012 PASSED BY THE 4TH
RESPONDENT. EXHIBIT P4 : TRUE COPY OF THE G.O.
(RT)NO.232/2014/G.EDN. DT.16-1-2014 PASSED BY THE 4TH RESPONDENT.
EXHIBIT P5 : TRUE COPY OF THE REVISED STAFF FIXATION

ORDER NO.B4/8306/12 DT.26-6-2014 PASSED BY THE 2ND

RESPONDENT. EXHIBIT P6 : TRUE COPY OF THE
GO(MS)NO.125/2001/GEN.ED.DT.2-4-2001.

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